

UNITED STATES DISTRICT COURT

for the

District of New Mexico

FILEDUnited States District Court
Albuquerque, New Mexico

United States of America)

v.)

ROBERT BENJAMIN NELSON)

Case No. 20mj1563)

Mitchell R. Elfers
Clerk of Court_____
*Defendant(s)***CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of September 12, 2020 in the county of Cibola in the

District of New Mexico, the defendant(s) violated:*Code Section*18 U.S.C. § 1114
18 U.S.C. § 924(c)(1)(A)(iii)*Offense Description*Attempted Murder of a United States Employee or Officer
Discharge of a Firearm During a Crime of Violence

This criminal complaint is based on these facts:

See attached affidavit.

☒ Continued on the attached sheet.*Complainant's signature*

Bryan Acee, FBI Special Agent

*Printed name and title***Submitted electronically and Sworn telephonically before me***Judge's signature*Date: September 12, 2020City and state: Albuquerque, New Mexico

Karen B. Molzen, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST WARRANTS

I, Bryan Acee, being duly sworn, depose and say:

INTRODUCTION AND PURPOSE OF THE AFFIDAVIT

1. I am employed as a Special Agent with the Federal Bureau of Investigation (FBI). I have been a law enforcement officer for 20 years, serving as a police officer, detective, and Special Agent. I have been with the FBI since 2009 and am currently serving as the Coordinator of the Albuquerque Violent Crime Task Force (VCTF), where I primarily investigate career offenders and violations of federal drug and firearms laws. Prior to my assignment to the VCTF, I was assigned to the Safe Streets Gang Task Force in Albuquerque, New Mexico, and the FBI/DEA Cross Border Drug Violence Squad in Las Cruces, New Mexico. I served as the FBI case agent in the government's 2010-2014 Continuing Criminal Enterprise/Drug Kingpin Act case against the Cartel de Juarez (Juarez Cartel) and the 2015-2020 gang-racketeering case against the New Mexico Syndicate (SNM) prison gang. Both investigations involved substantial drug trafficking activities and firearm-related offenses, as well as the investigation of multiple homicides and kidnappings.

2. This affidavit is being submitted in support of a criminal complaint and arrest warrant charging **ROBERT BENJAMIN NELSON** (hereinafter NELSON) with 18 U.S.C. § 1114 - Attempted Murder of a United States Employee or Officer and 18 U.S.C. § 924(c)(1)(A)(iii) - Discharge of a Firearm During a Crime of Violence.

3. On September 12, 2020, NMSP Officer S.D. was shot by NELSON during a traffic stop on the side of eastbound Interstate 40, near mile marker 136, within the County of Cibola, State of New Mexico. At the time of the traffic stop, Officer S.D. was in uniform, driving a marked NMSP vehicle, and serving as a federal Task Force Officer performing highway drug interdiction investigations with her K-9

partner.¹ The incident described herein occurred within the past few hours and is currently being investigated by the New Mexico State Police (NMSP), Albuquerque Multiagency Officer Involved Shooting Team, and the FBI. I have viewed NMSP video from the involved officer's dashboard camera and lapel camera. The crime scene(s) are still being processed, as such, I have not detailed every fact or circumstance pertaining to this investigation, rather just the information I believe supports probable cause to charge NELSON with the aforementioned violations.

STATEMENT OF PROBABLE CAUSE

4. On September 12, 2020, at 9:29 a.m., Task Force Officer (TFO) S.D. and her K-9 partner were performing highway drug interdiction investigative activities on Interstate 40, west of Albuquerque, New Mexico. TFO S.D. initiated an enforcement stop on a white GMC Sierra with Arizona license plate 347FTU, near mile marker 130. The aforementioned vehicle is registered to NELSON. The GMC Sierra yielded in the right shoulder of I-40. TFO S.D. approached the GMC from the passenger side. As TFO S.D. reached the passenger side window, the driver raised his right hand, and, with a handgun, fired through the passenger window. The driver was the only occupant in the single-cab truck. The firearm was clearly orientated at TFO S.D.'s head. As the first bullet travelled through the window, muzzle blast and glass shards impacted TFO S.D.'s face and eyes. TFO S.D. fell to the ground, drew her pistol and returned fire as the GMC Sierra sped away. TFO S.D.'s rounds impacted the rear window of the GMC Sierra. As the GMC Sierra drove away west, TFO S.D. returned to her NMSP vehicle and advised dispatch she had been shot and was pursuing the GMC Sierra.

5. TFO S.D. pursued the GMC Sierra eastbound on I-40. As TFO S.D. overtook the GMC Sierra, the truck pulled over again. TFO S.D. stopped approximately 50 yards behind the GMC and charged her patrol rifle. TFO S.D.'s hands were visibly bloody and appeared to have sustained gunshot

¹ Officer S.D. is a full-time NMSP K-9 officer and Task Force Officer with the United States Homeland Security Investigations (HSI) in Albuquerque, New Mexico

wounds. Meanwhile, two Laguna police officers arrived on scene to assist TFO S.D. Shortly thereafter, the driver of the GMC can be seen raising his hands and walking back toward the officers. The driver was taken into custody without further incident and identified by Arizona driver's license, which was on his person.

6. NELSON is currently being held at the NMSP office in Milan, New Mexico, pending issuance of this complaint and arrest warrant.

7. NELSON's GMC Sierra truck was seized by NMSP agents and towed to the NMSP office in Albuquerque. NMSP agents obtained a New Mexico District Court search warrant to search the truck. Inside the cab of the GMC Sierra, I observed a gray metal revolver on the front seat and an AK-47 rifle behind the seat. There appeared to be two gun cases behind the seats, as well. I observed three bullet holes in the passenger side window of the GMC Sierra, which were consistent with the NMSP dashboard and lapel videos I previously watched. I viewed TFO S.D.'s ballistic vest, which displayed her badge and the words STATE POLICE. A significant amount of blood had dried on the front of the vest and I observed what appears to be a bullet hole in the upper right panel of the vest, near the neckline.

8. TFO S.D. is presently in emergency surgery at a local hospital. I understand she suffered gunshot related injuries to her hands, right shoulder, face and eyes.

9. As mentioned above, TFO S.D. is a task force officer with Homeland Security Investigations. The Department of Homeland Security reports that TFO S.D. attended new/initial TFO training held via Webex from August 17-21 of 2020. She attended all five training days. Additionally, TFO S.D. attended Customs Law/Legal Training via Webex from August 24-25, 2020. She attended both training days. TFO S.D. took the legal exam on August 25 and passed on her first attempt. As such, TFO S.D. was certified by the Department of Homeland Security as a Task Force Officer pursuant to 19 U.S.C. § 1401(i). As indicated above, on September 12, 2020, TFO S.D. was engaged in the official duties as a

federal task force officer in that she was performing highway drug interdiction investigations with her K-9 partner.

INTERSTATE NEXUS

10. I believe the firearm used to shoot TFO S.D. is presently inside NELSON's GMC Sierra. The firearm clearly functioned, as it was utilized in the attempted murder of TFO S.D. As such, I believe that weapon meets the federal definition of a firearm. At least one other firearm, an AK-47 style rifle, was observed inside the GMC Sierra. I am aware that no firearms are currently manufactured within the State of New Mexico, therefore, it moved in or affected interstate commerce.

CONCLUSION

11. Based on the information contained herein, I believe that there is probable cause to charge NELSON with 18 U.S.C. § 1114 - Attempted Murder of a United States Employee or Officer and 18 U.S.C. § 924(c)(1)(A)(iii) - Discharge of a Firearm During a Crime of Violence. This affidavit was reviewed by Supervisory Assistant United States Attorney Jack Burkhead.

Respectfully submitted,



Bryan Acee
FBI Special Agent

Electronically submitted and telephonically sworn to me on September 12, 2020.



The Honorable Karen B. Molzen
United States Magistrate Judge
District of New Mexico